United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-1165

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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P/S

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JOHN GALANTE,

Appellant-Defendant,

Docket #76-1165

-against-

UNITED STATES OF AMERICA,

Respondent.

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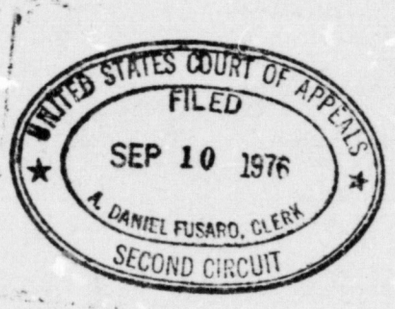
BRIEF FOR APPELLANT GALANTE



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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

JOHN GALANTE,

Appellant-Defendant,

-against-

UNITED STATES OF AMERICA,

Respondent.

Docket #76-1165

BRIEF FOR APPELLANT GALANTE

The appellant John Galante appeals to this court from the judgment of conviction entered against him after a jury trial in the United States District Court for the Eastern District of New York. The presiding judge was the late District Judge Orrin Judd.

Galante was convicted on both counts of a two count indictment, which charged possession of stolen goods, and conspiracy to so possess stolen goods. 75 CR 631.

The co-appellant Theodore Cameriero was also convicted on both counts. Co-defendant Menachem Cohen pleaded guilty to count two only, and was the government's principal witness at the trial.

Galante received a sentence of five years and has been admitted to bail pending appeal.

INDICTMENT (Appendix B)

In its pertinent parts, count 1 recites:

"On or about and between the 31st day of March, 1975 and the 11th day of April, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant MENACHEM COHEN, the defendant THEODORE N. CAMERIERO and the defendant JOHN FRANK GALANTE, also known as "Chubby", did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 18, United States Code, Section 659, by conspiring to wilfully and unlawfully receive and possess a quantity of NIKKOR camera lenses having a value in excess of One Hundred Dollars ($100.00), which goods had been stolen while moving as a part of and constituting a foreign shipment of freight from Tokyo, Japan to Garden City, New York, the defendants knowing the same to have been stolen."

In its relevant parts, count two states:

"From on or about and between the 31st day of March, 1975, and the 11th day of April, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant MENACHEM COHEN, the defendant THEODORE N. CAMERIERO and the defendant JOHN FRANK GALANTE, also known as "Chubby" did wilfully and unlawfully receive and have in their possession approximately Fifteen (15) cartons of NIKKOR camera lenses, having a value in excess of One Hundred Dollars ($100.00), which goods had been stolen from the Greenpoint Terminal Warehouse, Inc. located at 49 Noble Street, Brooklyn, New York, while moving as a part of and constituting a foreign shipment of freight from Tokyo Japan to Garden City, New York, the defendant MENACHEM COHEN, the defendant THEODORE N. CAMERIERO, and the defendant JOHN FRANK GALANTE, also known as "Chubby", knowing the same to have been stolen."

STATUTES INVOLVED

18 U.S.C. 659 prohibits the possession of stolen goods, which are moving as part of foreign commerce.

Section 371 of Title 18, U.S.C., is the general conspiracy provision, and is well known to members of this court.

Rule 803 (22) of the Federal Rules of Evidence provides that evidence of a judgment of a prior conviction, is not excluded by the hearsay rule, when offered to prove any fact essential to sustain the judgment.

Rule 403 of the Federal Rules of Evidence provides for the exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Rule 404 of the Federal Rules of Evidence allows for the admission of evidence of other crimes for purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

OPINIONS BELOW

The District Court did not author any opinions.

THE GOVERNMENT'S CASE

On April 9th, 1975, Federal agents, armed with a search warrant, visited a discount store at 1662 Pitkin Avenue, Brooklyn, known as Bristol Bargain Fair. The store was owned by the co-defendant Menachem Cohen. The agents showed the search warrant to Cohen, and explained to him that they were going to search the premises until they located certain stolen goods. Cohen agreed to take the agents to that portion of the store where the goods were hidden, and he agreed to co-operate with the agents in order to assist them in apprehending his partners.

Once the agents saw exactly where the goods were located, they decided not to remove the goods from the premises at this time, but to keep the place under surveillance so as to be able to arrest those who might come to pick up the goods. As a matter of fact they did keep the place under surveillance for forty-eight hours, until such time as co-appellant Theodore Cameriero came to the store with a truck in order to cart away the goods. The agents arrested Cameriero on April 11th as he was loading the truck.

Galante was not arrested until some four months later. He was not seen at the store on April 11th whenCameriero came to cart away the goods.

Furthermore, he was not seen at the store on April 9th when the agents first confronted Cohen. Galante was seen entering the store on April 10th, and seen leaving the store some10 minutes later. However, as the agents were outside the premises they did not see what, if anything, Galante did while inside this store.

Menachem Cohen testified for the government that Galante was his partner in this venture to buy, store, and sell stolen goods. He testified that on March 31st Galante and two other unknown men brought the goods to his store and stored them there with Cohen's permission. Acting on his own Cohen sold some of the stolen goods in Manhattan on April 4th, at which time he was arrested. After his arrest Cohen pressured Galante to remove the goods from the store. It is Cohen's testimony that he (Galante) arranged for Cameriero to come to the store to carry away the cartons.

Except for the one instance in which Galante was seen entering the store for a few moments on April 10th, there was no evidence to corroborate Cohen's testimony as to Galante's participation. The fingerprints taken from the cartons did not prove useful. Furthermore, Galante did not make any statement at the time of his arrest, nor was any evidence seized from him at the time.

The government's case was bolstered tremendously when the prosecution was allowed to introduce into evidence Galante's prior conviction

for the very same offense in the very same court. On June 22, 1973, Galante was convicted after a trial of knowingly possessing stolen goods, which had been moving in interstate commerce, in violation of 18 U.S.C. 659. See 72 CR 1211-EDNY. The prior judgment was received into evidence over defense objections. Exhibit 22, R 235-240, 272-274. At that time the court gave limiting instructions to the jury, advising the jury they may consider the prior judgment only on the issue of knowledge or intent or motive. R 275. Exhibit 22 was read in its entirety to the jury. R 275-277.

In its summation the government relied heavily upon the prior conviction. In its initial summation to the jury on this issue, the prosecution stated (R 339):

> "Ask yourselves about that conviction. Think about it when you ask yourselves the fact of whether or not Mr. Galante knew these goods were stolen. What Mr. Galante's motives were. What his purpose of being there on April 10, 1975? Ask yourselves about that conviction in considering those factors."

In answer to that argument, defense counsel stated in part (R 388-390):

> "Now, with respect to the prior conviction, it was a conviction of 1972.
>
> *********
>
> It was submitted to you for your consideration on limited grounds. You are to consider it only with respect to possible motive on the part of his participation in the transaction. Or knowledge on the part of Galante's participation

in the transaction, or part of a common plan or scheme on the part of Galante's participation in the transaction.

****

It is our position that Galante did not participate in the transaction at all. I submit to you that when you evaluate his 1972 conviction you will see it really is not relevant in any way to motive, knowledge, common plan or scheme. And of course Judge Judd will tell you that if you find that it is not related in any way to motive, knowledge, or common scheme, you are to disregard it. Obviously we are not trying the 1972 case. We are trying a 195 case and in the year 1976."

In reply, the prosecution argued (R406):

"Mr. Wales makes the argument that the prior conviction of Mr. Galante doesn't really have any relevance to the case. I submit to you ladies and gentlemen that when you look at the prior conviction ask yourself does it not have something to do with the case in the sense that is why Mr. Galante was there on April 10th? I think you can answer that question. Did he go there on the 10th as a decent patron of Mr. Cohen and not trying to manipulate other people and the FBI, or was he going there for reasons for which we know? That prior conviction has an awful lot to say."

At the close of the government's summation, defense counsel moved for a mistrial on the grounds of the undue emphasis given to the prior conviction in the presentation to the jury. (R 409):

"MR. WALES: I move for a mis-trial. The Government in its summation to the jury mentioned the prior conviction on several occasions, and went into it at great length, and, Your Honor, I think utilized

it in a way that could be very easy for the jury to convict Galante in this case because of the prior conviction. I think the Government's summation demonstrates the prejudice that could come as a result of Your Honor admitting that conviction into the evidence. On the strength of that, Your Honor, I move for a mis-trial.

THE COURT: Well, I think there hasn't been an undue amount of emphasis mentioned. You covered it at some length, and he came back on it. I think this is proper rebuttal, and I suppose it might have added to the effect. But I think I pointed out the limits that there are on the consideration to be given.

I will deny the Motion for a mis-trial. "

The government introduced into evidence over defense objection, the cartons of camera lenses, which had in fact been previously stolen. The government had not contended that Galante was in fact the person who actually stole the cartons, or even arranged for their theft. The prosecution proceeded on the theory that somewhere along the line Galante had come into possession of cartons which had recently been stolen. The defense objection to the receipt of the evidence was based on a claim of illegal search and seizure. That claim was the basis of a pre-trial motion to suppress, which motion was denied by the District Court prior to trial. The claim had been made that the supporting affidavit was wholly insufficient, but the trial judge ruled otherwise. R 13-21 (11/7/75 Transcript) - App. E; also AppD. Furthermore, the government claimed that the search could be justified on the basis of the consent of Menachem Cohen, and an evidentiary hearing was held on that issue. At the completion of the hearing the

District Court denied the defense contention that the consent was not in fact real and genuine, but merely represented Cohen's acquiescence in the face of a search warrant which was shown to him at the time by the agents. R 73-74 (11/7/75 transcript) - App. E.

THE DEFENSE CONTENTIONS

Galante did not testify, nor did he call any witnesses. Neither did the co-appellant testify, nor did he call any witnesses.

Galante argued to the jury that there was no evidence to corroborate the testimony of Menachem Cohen that Galante was in fact associated in Cohen's venture to possess and steal the cartons. Galante's counsel argued that inasmuch as Cohen was a defendant who had pleaded guilty, and he was testifying for the prosecution prior to his own sentencing, he had every motive to inculpate Galante in an effort to minimize his own predicament.

POINT ONE

THE DISTRICT COURT ERRED IN DENYING THE DEFENSE APPLICATION TO SUPPRESS THE SEARCH AND SEIZURE OF THE CONTRABAND BECAUSE THE SEARCH WARRANT AND THE UNDERLYING AFFIDAVIT WERE FATALLY INSUFFICIENT.

The government's case against Galante rested in substantial part upon the existence of the cartons of stolen goods, which were introduced into evidence at the trial over defense objections. In fact the case really did not develop until the period of April 9-11 when the agents searched the Bristol Bargain Fair store and seized the stolen goods which were located there, and which were in the process of being loaded upon the truck.

On April 9th, just prior to their returning to the Bristol Bargain Fair that afternoon, federal agents had secured a search warrant from the Magistrate, solely on the strength of the supporting affidavit of Charles K. Boling, an FBI agent. With regard to setting forth the basis for his belief that stolen goods were in fact concealed on the premises, in his affidavit, in this regard, agent Boling stated-(Appendix F)

> "The facts tending to establish the grounds for the issuance for a search warrant for the above-described premises are as follows:
>
> (1) A communication to the Federal Bureau of Investigation from a Mr. Dennis Mooney, an employee of the Greenpoint Terminal Warehouse, Inc., 49 Noble Street, Brooklyn, New York, that on March

22, 975 the warehouse had been entered and a quantity of cartons containing Nikkor Camera Lens had been stolen. Mr. Mooney further advised that the camera lens above-mentioned had been shipped by Nippon Kogaku, Inc., of Japan to Ehren Riech Photo, Inc. of 623 Stewart Avenue, Garden City, New York, and being held at the Greenpoint Terminal Warehouse under United States Customs Bond Numbers: B 255 776, B 257 313, B 231 030.

(2) A reliable confidential informant, who has previously supplied information to the Federal Bureau of Investigation which information has resulted in the arrest of six individuals in both the Eastern and Southern District of New York for the theft of approximately Two Hundred and Fifty Thousand ($250,000) worth of stolen merchandise, which arrests have resulted in two convictions, has stated that he was in the above-described premises known as Bristol Bargain Fair Inc., on April 7, 1975. While in the above-described premises the reliable informant observed the Nikkor Camera Lens as well as Precor Radios and APF Scientific Calculators that were stolen from the Greenpoint Terminal Warehouse on March 22, 1975."

The District Court denied the defense application attacking the sufficiency of the search warrant and the underlying affidavit. App. D, E.

Neither the District Court nor the government questioned the standing of the defendant Galante to move to suppress. The law of this circuit is quite clear that when a defendant is charged with mere possession of contraband, he has standing to move to suppress with regard to a search and seizure that takes place during the period in which he is charged with possession. In Count two Galante is charged with possession of the cartons in question during the period from March 31st to April 11th.

The search and seizure took place on April 9th and again on April 11th. When the search and seizure takes place during the period of time covered by the indictment, or a possession charge, this court has held in several cases that the defendant has standing. United States v. Price, 447 F2d 23, 29, (CA-2, 1971); United States v. Pastore, 456 F2d 99 (CA-2, 1972), affirming the lengthy unreported opinion of Chief Judge Jacob Mishler, 70 CR 586 - EDNY (3/26/71).

Also see the following cases from this court and from the Supreme Court of the United States, all of which give standing to a defendant who is charged with possession:

Jones, 362 US 257;

Simmons, 390 US 377;

Alderman, 394 US 165;

Bozza, 365 F2d 206;

Cowan, 396 F2d 83;

Sacco, 436 F2d 80;

Cobb, 432 F2d 716;

Nor does the decision of the High Court in Brown v. United States 411 F2d 223, 228-229 (1975) alter the applicable law. In that case the Supreme Court specifically noted that the prosecution evidence against Brown did not depend upon his decision of the seized evidence at the time of

the contested search and seizure. As such the High Court specifically declined to review the automatic standing rationale of Simmons and Jones, and reserved to another date the issue whether possession at the time of the contested search and seizure is "an essential element of the offense charged". 411 US at 228.

The affidavit in support of the search warrant application was insufficient in that it failed to set forth the "underlying circumstances", as required by the land mark decisions of Spinelli (393 US 410, 413); Aquilar v. Texas, (378 US 108) and Ventresca (380 US 102).

The cases set forth a two-prong standard. The Magistrate must be satisfied that the informant is "credible", and that his information is "reliable". As to the credibility of the informant, the defense had no way of knowing of whether the statement of the FBI agent to the effect that the informant had helped the FBI on prior occasions was accurate or not. As such the District Court erred in denying the defense request that the District Judge himself (in camera) examined the relevant information on that score so that the District Court could determine for itself whether in fact the informant had been reliable on prior occasions.

As to the issue of the "underlying circumstances", the case law requires that the Magistrate be satisfied that the information supplied

by the informant is not merely a tip, hearsay, or pure fiction.

We must recall that the FBI agent himself lacked personal knowledge of the situation, and in his affidavit was repeating solely what he had been told by the informant. The informant advised us in conclusory form that he had observed the goods in question at the premises, and concluded that they were in fact stolen from the warehouse a week or two earlier. The Magistrate was not informed of any of the "underlying circumstances" that would lead him to credit the informant's statement. The Magistrate was not advised whether the informant was the thief in question. The Magistrate was not advised as to whether the informant had seen these goods at the warehouse. The Magistrate was not informed as to whether the informant had learned from another thief or from the receiver to the effect that the goods had been stolen. The Magistrate was not advised in any way how the informant could look at the goods, and determine from merely looking at the goods that they had in fact been stolen from the warehouse two weeks earlier. In short, the Magistrate was told nothing other than a conclusion that in the opinion of the informant himself, the goods had been previously stolen.

The case law requires much more in order to support a determination of the Magistrate that in fact the information was "reliable".

The Court is invited to a recent discussion of this issue in United

States v. Karthanos, 531 F2d 26, 29-32 (CA-2, 1976). In that opinion Judge Mansfield reviews the standards of Spinelli and Aguilar, with regard to the "underlying circumstances". In that case this Court found that the "bald statement" in the supporting affidavit was totally insufficient for inferring the criminal aspect of the defendant's conduct. In that regard Judge Mansfield wrote (631 F2d at 31):

> "While an affidavit supporting a search warrant should not be read in a grudging or technical manner...neither should it require the Magistrate, or a reviewing court, to use imagination to supply essential details critical to determining probable cause."

Similarly in our case, a naked statement by an informant that cartons were stolen is insufficient in itself. The informant is required to set forth the basis for his knowing that the cartons had been stolen. Without setting forth that basis, the Magistrate just has no way of crediting the statement of the informant.

Nor is there any merit in the attempt by the government to justify the search and seizure on the basis of the consent of Menachem Cohen. The evidentiary hearing on November 7, 1975 was directed toward that goal. However, both the testimony at that hearing, plus documents submitted prior to the hearing, showed that Menachem Cohen "consented" to a search and seizure of his premises on the afternoon of April 9th, only after the federal agents had already secured a search warrant, and had

shown the search warrant to Cohen. As such Cohen merely yielded to the authority of the search warrant - an authority he could not question at the time.

In Bumpers v. North Carolina 391, US 543, the Supreme Court has made it clear that one yielding to the existence of a search warrant, or the claim of a search warrant, is yielding merely to a showing of authority, and is not consenting to a search and seizure as the courts have interpreted the term "consent".

POINT TWO

THE DISTRICT COURT ERRED IN ADMITTING INTO EVIDENCE THE PRIOR CONVICTION FOR A SIMILAR OFFENSE. FURTHERMORE, THE PROSECUTION IN SUMMATION ERRONEOUSLY EXPLOITED THE ISSUE OF THE PRIOR CONVICTION.

The District Court was in error when it admitted into evidence the judgment of the prior conviction. Exhibit 22; R 272-274. Additionally the District Court erred when it denied the defense application for a mis-trial, at the close of the prosecution summation, on the claim that the prosecution had exploited the existence of the prior conviction.

The defense had sought to exclude the receipt of the prior judgment on the ground that that judgment was not necessary to "prove any fact essential to sustain the judgment", as provided by Rule 803 (22) of the Federal Rules of Evidence. Furthermore, the defense argued that the prior conviction, while of course similar in nature, was in no way relevant to the issue of plan, or motive, or intent. In fact there was no issue as to plan, or motive, or intent. The prior offense was in no way related to the offense shown at the trial, either by time, place, or existence of other persons. Nor did the defendant Galante ever argue that he participated in the transaction, but without criminal knowledge or intent. At all times his defense was that he was in no way a participant in the transaction in question. As such the District Court abused its discretion in admitting

the prior conviction, for there was in fact no balancing to be done. The prior conviction was relevant to nothing.

In that regard this Court is invited to a full discussion of this issue in United States v. Goodwin, 492 F2d 1141, 1148-1154 (CA-2, 1974). In that case the Fifth Circuit reversed the conviction, because of the improper receipt of evidence of another crime. In that instance the court emphasized the requirement that the record substantiate that any admission of such evidence be based upon real issues of intent, design, plan, or identity, and that the mere mention of those words without a regard to really substantiating it is not sufficient to warrant the receipt of the evidence.

The Court is invited to the discussions of this issue in the following opinions of this court:

PAPADAKIS, 510 F2d 287, 294-295;

BERMUDEZ, 526 F2d 89, 95, Footnote 3;

TORRES, 519 F2d, 723, 727;

TRAMUNTI, 513 F2d 1087, 1116.

Each of these opinions authorizes the receipt of evidence of a prior crime, if in some way relevant to the offense shown or the offense at issue in the trial. As such in each case we must ask ourselves - relevant to what? If the evidence shows that a prior crime is related in some way to the one at trial, because of the same location, the closeness of time, the same mode of operation, or the same team of thieves, then

perhaps a showing has been made as to relevance. If the defense raised at the trial is lack of knowledge, or intent to do wrong, then perhaps a showing of prior knowledge or prior intent may well be relevant. However, when none of these factors exist, the showing of a prior unrelated conviction in no way assists the jury in genuinely resolving the issues posed by the indictment. All it does is show the jury that the defendant has been a criminal on prior occasions, and therefore more probable than not that he is a criminal at this particular time. Obviously the case law does not authorize a showing.

In addition, the United States Attorney was not satisfied merely to secure the admission of the judgment of conviction. The prosecutor read Exhibit 22 in its entirety to the jury. R 275-277. Furthermore, in its initial summation, the prosecutor not only reminded the jury of the existence of the prior conviction, but asked the jury to keep it in mind when determining what Galante had in mind when he was at the premises on April 10th (R 339):

> "Ask yourself about that conviction. Think about it when you ask yourselves the fact whether or not Mr. Galante knew these goods were stolen. What Mr. Galante's motives were. What his purpose of being there on April 10, 1975? Ask yourself about that conviction in considering those factors".

After defense counsel tried to minimize the impact of the prior conviction, in his summation (R 388-390), the prosecution came back for a final, prolonged argument to the jury (R 406):

"Mr. Wales makes the argument that the prior conviction of Mr. Galante doesn't really have any relevance to the case. I submit to you ladies and gentlemen that when you look at the prior conviction ask yourself does it not have something to do with the case in the sense that is why Mr. Galante was there on April 10th? I think you can answer that question. Did he go there on the 10th as a decent patron of Mr. Cohen and not trying to manipulate other people, and the FBI, or was he going there for reasons which we know? That prior conviction has an awful lot to say."

It is obvious that this was a very close case. The government's case depended almost solely upon the testimony of Menachem Cohen, a co-defendant, who had every motive to testify to inculpate Galante in an effort to minimize his own predicament. The agents were not in any way able to corroborate the testimony of Cohen with respect to the events of a two week period, except that for ten minutes on April 10th Galante was seen entering and exiting the Bargain Fair store. Of course we must remember that April 10th was not a particularly critical date. On April 9th the agents came to the store, and confronted Cohen with a search warrant. At that time they located the goods. On that day Galante was not seen at all at the store. On April 11th the co-appellant Cameriero was arrested while loading the truck. On that day Galante was not seen at or near the store. In fact Galante was not arrested until some months later. As such the evidence of Galante's prior conviction was a powerful piece of evidence tipping the scale in favor of the government, and converting a thin case involving little or no corroboration into a persuasive case having great jury appeal.

The purpose of evidence of a prior conviction is not to bolster a weak government case. Nor is its purpose to offer corroboration to accomplice testimony, where none otherwise exists. Evidence of a prior conviction is to be utilized, only when appropriate, and only for very limited purposes. In this case the prosecution in summation utilized it for very persuasive and corroborative purposes, and used it to remind the jury on several occasions, that they were dealing with an experienced defendant, who has been through this before. As such the prosecution improperly exploited and abused this very delicate area of receipt of potentially prejudicial evidence. In that regard the District Court erred when it denied the defense application for a mistrial.

CONCLUSION

The judgment of conviction should be reversed.

Respectfully submitted,

August, 1976

H. ELLIOT WALES
Counsel for appellant Galante

C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Index No.

Docket #76-1165

JOHN GALANTE,

Plaintiff

against

UNITED STATES OF AMERICA,

Defendant

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF New York *ss.:*

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at
Queens, New York.

That on August 31st *1976 deponent served the annexed*
Brief for appellant, John Galante

on Legal Aid, Room 509, U.S. Courthouse, Foley Sq.N.Y.C. and U.S. Attorney, *attorney(s) for*
in this action at U.S. Courthouse, 225 Cadman Plaza E. Brooklyn, N.Y. 11201
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me
this 31st day of August, 1976.

Loretta O'Brien

LORETTA O'BRIEN
Notary Public, State of New York
No. 41-8178958
Qualified in Queens County
Commission Expires March 30, 1978

Lillian Kurtzer

The name signed must be printed beneath

Lillian Kurtzer

C 321—Affirmation of Service of Papers by Mail.
Affidavit of Service By Mail on Reverse Side.

Index No.

Plaintiff

against

Defendant

ATTORNEY'S AFFIRMATION OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, attorney at law of the State of New York affirms: that deponent is attorney(s) of record for

That on 19 deponent served the annexed

on
attorney(s) for
in this action at
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated

The name signed must be printed beneath

Attorney at Law